XI-HC-22

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

(20)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.1107 OF 2004

APPELLANT — Shivnath Ram S/o Afinder Ram, aged about 40 years, occupation cultivation, resident of Village Vasudevpur, Police Chowki Duldula District Jashpur (CG)

VERSUS

RESPONDENT — The State of Chhattisgarh Through the District Magistrate, Jashpur (C.G.)

Present:
Mr. Sunil Sahu, counsel for the appellant.
Mr. Neeraj Mehta, P.L. for the State/respondent.

ORAL JUDGMENT
(4th October 2007)

Dhirendra Mishra, J

This appeal is directed against the judgment of conviction and order of sentence dated 13.12.2004 passed in S.T.No. 111/04 whereby learned Additional Sessions Judge, Jashpur has convicted the appellant under Section 376(1) of the IPC and sentenced him to undergo R.I. for seven years, pay a fine of Rs.1,000/- and in default of payment of fine to further undergo R.I. for six months.

CJ-HC-22

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. Case of the prosecution in brief is that on 6.9.2004 at about 3.00 p.m. when the prosecutrix along with her friends Aruna Toppo and Alpana Kujur had gone to Bhainsmara forest to collect vegetable, they met the accused who was holding axe. He talked to them and thereafter, followed them for a distance and all of a sudden started running towards them, as a result of which they got frightened and started running in different directions. While running leg of the prosecutrix was entangled with the creepers and she fell down. The accused came near the prosecutrix and forcibly raped her after lying her on the ground. After commission of the offence she ran away from there. However, in the process of running her skirt fell in the forest. On way she met both of her friends. She also met Mery Kerketta, Kolistiska Kujur whom she narrated about the incident. They all returned to the forest and searched Shivnath. However, they could not find him nor they could find skirt of the prosecutrix. After returning home, she narrated the incident to her Bhabhi and father and thereafter report of Ex.P/1 was lodged.

3. The prosecutrix was sent for medical examination to Community Health Centre, Duldula where Dr. Rajni Shanta Tigga (PW-7) examined her and gave report of Ex.P/11. The accused was also sent for medical examination and his medical examination report is Ex.P/13. After completing investigation

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

charge sheet was filed in the Court of Chief Judicial Magistrate, Jashpur and the same was received on transfer for trial by the learned Additional Sessions Judge.

3. During trial the prosecution examined 12 witnesses in all. Thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C. wherein he pleaded innocence and stated that he had gone to the forest where a bear ran after him and to save his life he ran. He did not chase them and he did nothing. However, learned trial Court after hearing counsel for the respective parties, convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment.

4. Learned counsel for the appellant submits that the prosecutrix is a girl of 17 years. Her version does not inspire confidence as from her medical examination report of Ex.P/11 it would be evident that she did not sustain any external or internal injury over her person. There is evidence available on record which shows that there is animosity between the members of the prosecutrix's community and the Hindus, neighbourers of the prosecutrix had gone to the house of appellant and beat Shivnath and his father and on account of above animosity, the appellant has been falsely framed in the above offence. It is further argued that the prosecution witnesses are relatives of the prosecutrix and no independent witness has been examined.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5. On the other hand, learned counsel for the State/respondent supports impugned judgment of the trial Court.

6. I have heard learned counsel for both the parties and perused the impugned judgment as also the evidence available on record.

7. Conviction of the appellant is based on the statements of the prosecutrix (PW-1), Aruna Toppo (PW-2) and also based on the statement of Matiyas Kerketta (PW-3) who is father of the prosecutrix.

8. PW-1 the prosecutrix has stated that on the date of incident at about 10.00 p.m. she along with her friends had gone to the forest for collecting vegetables. In the afternoon they met the accused, who asked them from where they were bringing vegetables and after their reply, he came behind them for a distance. Thereafter, he started running towards them. Out of fear she and her two friends Aruna Toppo and Aalpana Kujur started running in different direction. While running the prosecutrix fell on the ground as her one leg was entangled in creepers. The accused threw her on the ground, tore her skirt and took out her underwear and forcibly raped her. After committing rape he asked her to sleep with him again and when she started running, her skirt fell in the forest. However,

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused chased her even then but could not catch her. On way she met her friends, who were searching her. She narrated the incident to them and also to Mery and Kolestina. Thereafter, they went in search of the accused. However, they did not find him nor they could find her skirt. After returning home, she narrated the incident to Seema Kerketta and father Matiyas Kerketta and thereafter report of Ex.P/1 was lodged. In her cross-examination she has denied the suggestion that the accused told them that a bear ran after him and they started running seeing the accused running. In paragraph 13 she has stated that a meeting was convened in their community on the same evening where she had stated that seeing Shivnath running, they all started running and while running she fell down. She has also admitted that after the meeting, some persons from her community had gone to call the accused. However, she has denied that they beat Shivnath and his father. In the lengthy cross-examination of this witness, defence has not been able to elicit anything which makes the statement of this witness doubtful or incredible. The omissions present in the statement of the prosecutrix are not of grave nature. Her statement is duly corroborated by the statement of Aruna Toppo.

9. PW-2 Aruna Toppo has accompanied the prosecutrix at the time of incident. She has also stated that they met the accused in the forest who was holding axe and a long wooden

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rafter. The accused talked to them and thereafter, he ran towards them as a result of which they ran in different directions. The accused initially ran after them, however, thereafter he ran after the prosecutrix. After coming out of the forest they waited for the prosecutrix for some time and returned inside the forest to look for the prosecutrix where they found her coming from the forest side weeping. She (the prosecutrix) narrated the incident to them. Similar is the statement of Matiyas Kerketta, father of the prosecutrix (PW-3) who has stated that after returning from forest, her daughter informed him that the accused had chased her with axe and thereafter raped her. Dr. Rajnee (PW-7) who examined the prosecutrix and gave report of Ex.P/11 has stated that there was no injury over her private parts except a bruise mark of size of 2 inches on her dorsal aspect of right thigh, there was an old rupture of hymen, her vagina admitted one finger easily, there was no fresh sign of rupture of hymen and she did not complain pain on internal examination and no definite opinion about rape can be given.

10. So far as argument of learned counsel for the appellant that absence of injury over person of the prosecutrix and the accused negates allegation of rape, is concerned, the statement of prosecutrix cannot be discarded simply because her version is not corroborated by the medical evidence particularly when there is evidence available on record that she is a girl of 17

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

years with old rupture of hymen. It is well settled principle of law that conviction can be founded on the solitary testimony of the prosecutrix where the same inspires confidence of the Court. In the instant case, as has already been pointed out in the foregoing paragraphs, the defence has not been able to impeach credibility of the prosecutrix and her version is duly corroborated by the statements of Aruna Toppo (PW-2) who accompanied her at the time of incident. The appellant has also accepted his presence at the place of occurrence and reason for false implication suggested by the defence in the cross-examination of the witnesses is not of such a nature, on the basis of which the prosecutrix or her parents would involve honour of the prosecutrix. Therefore, defence of the appellant that he has been falsely implicated because of rivalry between the two communities, cannot be accepted.

11. On the basis of aforesaid discussion, this Court is of the considered opinion that conviction of the appellant by the trial Court is based on proper appreciation of the evidence available on record and the same does not call for interference by this Court.

12. In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly, dismissed.

Sd/-
DHIRENDRA MISHRA
Judge

K/-